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 INC., DAVID MALKA, SHRAGA AGAM and
 PATRICK DETCHMAN

UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF CALIFORNIA

ANTON EWING, an individual,

Plaintiff,

v.

A1 SOLAR POWER, INC., a California
 Corporation; A1 SOLAR POWER, LLC.,
 a California limited liability company;
 PATRICK DETCHMAN, an individual;
 DAVID MALKA, an individual;
 SHRAGA AGAM, an individual;
 JACOB SHERF, an individual; IMAGE
 HOME DESIGN, INC., a California
 corporation (aka California Preferred
 Builders, Inc.); SMART ENERGY
 SOLAR, INC., a California corporation;
 LEOBARDO JOAQUIN BAUTISTA,
 an individual (aka Bautista Leo Joaquin);
 UNITED EXPRESS CONSTRUCTION,
 INC., a California Corporation; AMER
 DUYED, an individual; FREDI
 HAMIAS, an individual; TREEIUM
 INC., a California Corporation; MOTY
 GINSBURG, an individual;
 SOLARCITY CORPORATION, a
 Delaware Corporation; JAMES HENRY
 CAHILL, an individual; BENJAMIN

Case No. '16CV0383 JLS NLS

NOTICE OF REMOVAL OF CIVIL ACTION UNDER 28 U.S.C. § 1331 (FEDERAL QUESTION)

[Filed concurrently with:
 (1) Notice to All Parties;
 (2) Corporate Disclosure Statement;
 (3) Declaration of Henry Nicholls]

Action Filed: October 20, 2015

JEREMIAH LIU, an individual;
 LYNDON ROBERT RIVE, an
 individual; PETER JOSHUA RIVE, an
 individual; BRIAN LEE ZIMMERLY, an
 individual; Delaware Corporation;
 RENEHOMES, INC., a Delaware
 Corporation; JINHUI CHEN, an individual;
 JOHN DOES 1 -100; ABC CORPORATIONS
 1- 100,

Defendants.

**TO THE CLERK OF THE UNITED STATES DISTRICT COURT FOR
 THE SOUTHERN DISTRICT OF CALIFORNIA AND TO PLAINTIFF AND
 TO ALL OTHER PARTIES:**

PLEASE TAKE NOTICE that pursuant to 28 U.S.C. §§ 1441 and 1446,
 Defendants A1 SOLAR POWER, INC., DAVID MALKA, SHRAGA AGAM and
 PATRICK DETCHMAN (hereinafter referred to collectively as "A1 Solar Power
 Defendants"), through their counsels of record David R. Socher Attorney at Law,
 PC and Cohon & Pollak, hereby file this Notice , in order to remove to the United
 States District Court for the Southern District of California, the state court action,
 Case No. 37-2015-00035326-CU-BT-CTL in the Superior Court of the State of
 California for the County of San Diego, further described below. The basis for
 removal is federal question jurisdiction pursuant to 28 U.S.C. § 1331.

I. INTRODUCTION

Plaintiff ANTON EWING (hereinafter "Plaintiff") filed an action against the
 A1 Solar Power Defendants and others, Case No. 37-2015-00035326-CU-BT-CTL
 in the Superior Court of the State of California for the County of San Diego.
 Plaintiff's Complaint was filed on October 20, 2015, and alleges causes of action for
 violations of California's Invasion of Privacy Act, 18 U.S.C. § 1964(c); 47 U.S.C.
 §227; Fraud; Trespass to Chattles; Caller ID Spoofing; and the Business and

1 Professions Code. (Declaration of Henry Nicholls, ¶ 2, Exhibit A).

2 In compliance with 28 U.S.C. § 1446(a), attached hereto as Exhibits A
3 through W are the true and correct copies of all process, pleadings, and orders
4 served upon defendants in the state court action Case No. 37-2015-00035326-CU-BT-
5 CTL and in the previous federal court action Case No. 3:15-cv-02695-LAB-DHB.

6 Plaintiff's Complaint alleges violations of several federal statutes, thus
7 providing this Court with jurisdiction under 28 U.S.C. § 1331.

8 28 U.S.C. § 1446(a)(2)(C) provides, "If defendants are served at different
9 times, and a later-served defendant files a notice of removal, any earlier-served
10 defendant may consent to the removal even though that earlier-served defendant did
11 not previously initiate or consent to removal."

12 In the instant action, on December 1, 2015 Defendants SMART ENERGY
13 SOLAR, INC. and LEOBARDO JOAQUIN BAUTISTA (hereafter referred to as the
14 "Smart Energy Defendants") filed a notice of removal of this action setting additional
15 grounds for federal question jurisdiction under 28 U.S.C. § 1331. On December 21,
16 2015, the Smart Energy Defendants filed an amended notice of removal of this action
17 setting forth federal question jurisdiction under 28 U.S.C. § 1331. The removed action
18 was designated as Case No. 3:15-cv-02695-LAB-DHB and was assigned to the
19 Honorable Larry Alan Burns of this Court. (Declaration of Henry Nicholls, ¶ 3,
20 Exhibits M and P).

21 On December 7, 2015, Plaintiff filed a Motion to Remand this action to state
22 court. (Declaration of Henry Nicholls, ¶ 4, Exhibit O).

23 On January 7, 2016, Plaintiff and the Smart Energy Defendants entered into a
24 joint stipulation to remand this action to state court in connection with their
25 settlement of Plaintiff's claims against the Smart Energy Defendants. (Declaration
26 of Henry Nicholls, ¶ 5, Exhibit U).

On January 14, 2016, the Honorable Larry Alan Burns of this Court entered an order pursuant to the Stipulation of January 7, 2016, remanding this action to state court. (Declaration of Henry Nicholls, ¶ 6, Exhibit V).

The United States District Court for the Southern District of California has jurisdiction over this action under 28 U.S.C. § 1331, and this action is removable under 28 U.S.C. 1441(c)(1)(A) in that this is a civil action involving claims brought under federal statutes.

Venue is proper in this division, under 28 U.S.C. § 1446(a), because this division embraces the County of San Diego, the County wherein the state court action is currently pending.

Written notice of the filing of this Notice will be promptly served on Plaintiff and all other Defendants, and a copy will be filed promptly with the Superior Court of the State of California for the County of San Diego, pursuant to 28 U.S.C. § 1446(d).

II. FEDERAL QUESTION JURISDICTION EXISTS

Federal question jurisdiction exists under 28 U.S.C. 1441(c)(1)(A) in that Plaintiff is claiming violations of 18 U.S.C. § 1964(c) and 47 U.S.C. § 227. These are questions arising under the laws of the United States, which are wholly apparent from the face of Plaintiff's Complaint.

Specifically, the second cause of action in Plaintiff's Complaint is brought under 18 U.S.C. § 1964(c) and concerns allegations of racketeering, in which Congress enacted the Racketeer Influenced and Corrupt Organizations statute (RICO). Plaintiff's Complaint alleges that "Defendants have engaged in predicate acts of wire fraud and money laundering which supports the claim of violation of 18 U.S.C. § 1962(d) and (c), conspiracy to conduct racketeering affairs through a pattern of racketeering activity." (Exhibit A, Plaintiff's Complaint, ¶ 117).

The third cause of action in Plaintiff's Complaint asserts a violation of 47 U.S.C. § 227 which alleges prohibited "calling [of] any number on the national Do Not Call list." Plaintiff claims that the A1 Solar Power Defendants "violated the automated-call requirements under 47 U.S.C. § 227(b)(3) and willfully and knowingly violated the do-not-call-list requirements under 47 U.S.C. § 227(c)(5)." (Exhibit A, Plaintiff's Complaint, ¶ 140).

III. SUPPLEMENTAL JURISDICTION EXISTS

Supplemental jurisdiction exists as to the remainder of Plaintiffs claims, pursuant to 28 U.S.C. § 1337(a). Plaintiffs remaining claims under state law arise out of the same case or controversy as the Federal claims, thus giving this Court supplemental jurisdiction.

IV. JOINDER BY ALL DEFENDANTS IS NOT REQUIRED

Generally, all defendants in the state action must join in the notice of removal. *Parrino v. FHP, Inc.* (9th Cir. 1998) 146 F3d 699, 703. When fewer than all defendants have joined the notice of removal, the burden is on the removing defendants to explain the absence of the other defendants. *Prize Frize, Inc. v. Matrix (US.) Inc.* (9th Cir. 1999) 167 F3d 1261, 1266. In the instant action, joinder by all defendants is not feasible, and as such, not required. Based on Defendants' evaluation of the state court docket, Plaintiff has not filed proper proof of service documents demonstrating that all of the co-defendants in the state court action have been served. (Declaration of Henry Nicholls, ¶ 7).

Those named as defendants, but not yet served in the state court action, need not join the notice of removal. *Desino v. Reiswig* (9th Cir. 2011) 630 F3d 952, 955. Thus, a defendant who has been served or who has otherwise acquired notice of a state court action need not seek out and notify codefendants who have not yet been served to ask them to join in the removal. See *Gossmeier v. McDonald* (7th Cir.

1997) 128 F3d 481, 489. Based on the foregoing reasons, Defendants need not seek out and notify the other defendants and ask them to join in the instant removal.

Notwithstanding, Defendants have made a reasonable and good-faith effort to provide written notice of the filing of this Notice for Removal to the other defendants, based on the addresses of said co-defendants as provided within Plaintiffs claimed "proof of service" documents.

V. CONCLUSION

Because this action involves federal question jurisdiction, and the requirements of supplemental jurisdiction are satisfied, the requirements for removal are satisfied and this Court has jurisdiction.

This Notice and all Exhibits attached hereto are signed pursuant and subject to the certification requirements of Rule 11 of the Federal Rules of Civil Procedure.

Base on the foregoing, further proceedings in Case No. 37-2015-00035326-CU-BT-CTL in the Superior Court of the State of California for the County of San Diego must be discontinued, and this action shall be removed to the United States District Court for the Southern District of California.

Dated: February 11, 2016

DAVID R. SOCHER ATTORNEY AT LAW,
PC

Bv: /s/ David R. Socher

David R. Socher, Esq.
Attorney for Defendants, A1 SOLAR
POWER, INC., DAVID MALKA,
SHRAGA AGAM and PATRICK
DETCHEMAN

1
2
3 Dated: February 11, 2016

COHON & POLLAK, LLP

4
5 Bv: /s/ Henry Nicholls

6 Henry Nicholls, Esq.
7 Attorney for Defendants, A1 SOLAR
8 POWER, INC., DAVID MALKA,
9 SHRAGA AGAM and PATRICK
10 DETCHMAN
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I am employed in the county of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is 10250 Constellation Ave., Suite 2320, Los Angeles, California 90067.

x by placing the original x a true copy thereof enclosed in sealed envelopes addressed as follows:

X BY MAIL

X I deposited such envelope in the mail at Los Angeles, California.

As follows: I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with U.S. postal service on that same day with postage thereon fully prepaid at Los Angeles, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

Executed on February 11, 2016 at Los Angeles, California.

(State) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

X (Federal) I declare that I am a member of the bar of this Court.

/s/ Henry Nicholls
Henry Nicholls

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